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10/674,653	09/30/2003	Marc E. Feinberg	ETH5092 [13926]	4786
25570	7590	11/09/2009	EXAMINER	
ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C. Intellectual Property Department P.O. Box 10064 MCLEAN, VA 22102-8064			RYCKMAN, MELISSA K	
		ART UNIT	PAPER NUMBER	
		3773		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/674,653	<b>Applicant(s)</b> FEINBERG, MARC E.
	<b>Examiner</b> MELISSA RYCKMAN	<b>Art Unit</b> 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

- 1) Responsive to communication(s) filed on 15 June 2009 and 10 August 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-6,8,14,21,22 and 27-50 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,14,21,22,27-37,43-45,49 and 50 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5,6,8,38-42,46-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 August 2009 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-646)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No./Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No./Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

This office action is in response to claims filed 6/15/09.

##### ***Drawings***

The drawing submitted 8/10/09 (of Fig. 12) will not be entered. The drawing shows material that was not in the application when originally filed. Specifically, the object to the left of the socket 117 is not described in the specification. The pad as shown in the original drawings (element 144, Fig. 7) simply shows the pad with a ball. The claims recite more than the pad.

The drawings dated 2/30/2003 are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the drawings must show the distal end of the elongate arm having a ball, and the adhesive pad having a socket must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The substitute specification filed 6/15/09 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: the drawing of Fig. 12 has not been entered, therefore the description will not be entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 recites the limitation "the connector" in the last line of the claim. There is insufficient antecedent basis for this limitation in the claim. The examiner suggests changing "the connector" to "the ball and socket connector."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8, 38-42, and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (US 6394951), and further in view of Coffey (U.S. Patent No. 2,003,629).

Regarding Claim 8, Taylor teaches a tissue approximation device comprising two elongate arms (3), an attachment means (144) to secure the elongate arms to each other at one or more locations, adhesive pads (4, Column 14, proximate lines 1-37) movably connected (18, 19) on at least a portion of the elongate arms to anchor the tissue approximation device to the tissue (fig. 321a), and a locking means (181) to lock the elongate arms in place relative to each other, wherein (i) the adhesive pads are spaced apart from the one or more locations of the attachment means (144) in the direction of the elongate arms, and (ii) the tissue approximation device has an open (fig. 31b) and a closed position (fig. 31a), and when in the closed position, the adhesive pads are parallel and non-contiguous to each other (fig. 31a).

Taylor teaches the second surface coupled to the distal end of each of the elongate arms by a ball and socket connector (18 and 19, Fig. 2), wherein the second surface has one of a socket and a ball that communicates with the other one of a ball and a socket on the distal end of each of the elongate arms.

Taylor does not teach the first and second sockets being a rotatable connection, however Coffey teaches a rotatable connection between the elongate arms and the pad, and the adhesive pad is rotatable around the connector about at least two axes (slight rotation is possible along two axes). It would have been obvious to one of ordinary skill in the art to use the rotatable connection of Coffey with the device of Taylor as this allows smooth action and aids in use of the jaws (page 1, ll. 47-55, page 2, col. 1, ll. 1-3).

Regarding Claim 5, Taylor teaches the tissue approximation device of claim 1, wherein the elongate arms (3) form a pair of forceps, the attachment means (144) is a yoke on the forceps, and the locking means (151) is a ratchet mechanism on the forceps.

Regarding Claim 6, Taylor teaches the tissue approximation device of claim 5, wherein the distance between the elongate arms is adjustable by means of a ratchet mechanism (151).

Regarding Claim 38, Taylor teaches a tissue approximation device capable of application to a skin surface adjacent to a wound comprising: a pair of arms (3), each arm having a longitudinal axis and opposed ends, wherein one end includes a handle (fig. 31a) and the other end includes a tong (1) with a connector (19); and an attachment mechanism coupled to each arm (144) such that the distance between each tong is selectively variable; an adhesive pad (4) removably coupled to the connector of each tong (18) wherein each adhesive pad has an adhesive surface (4) that extends in a plane generally parallel to the longitudinal axis of the respective tong (fig. 2), the

adhesive surface having a high shear resistance, and wherein the connectors support the adhesive pads to be positionable in a common plane on opposed sides of a wound; and a locking mechanism (151) coupled to each arm to selectively lock the pair of arms in a fixed position relative to each other,

Taylor does not teach the first and second sockets being having a rotatable connection, however Coffey teaches a rotatable connection between the elongate arms and the pad, and the adhesive pad is rotatable around the ball about at least two axes (slight rotation is possible along two axes). It would have been obvious to one of ordinary skill in the art to use the rotatable connection of Coffey with the device of Taylor as this allows smooth action and aids in use of the jaws (page 1, ll. 47-55, page 2,col. 1, ll. 1-3).

Regarding Claim 39, Taylor teaches the arms are connected in a scissors configuration (fig. 31a)

Regarding Claim 40, Taylor teaches the adhesive pad (4) includes serrations.

Regarding Claim 41, Taylor teaches the locking mechanism (151) includes a ratchet.

Regarding Claim 42, Taylor teaches the arms (3) are made of resilient material (Column 12, proximate lines 50-60, it is noted that the present application only describes that the arms may be made of either plastic or stainless steel, as taught by Taylor).

Regarding Claim 46, Taylor teaches the second surface has the socket (19) and the distal end has the ball (18, Fig. 2).

Regarding Claim 47, Taylor teaches the second surface has the ball (18) and the distal end has the socket (19, Fig. 2).

Regarding Claim 48, Taylor teaches the second surface and the distal end of the elongate arm connect in a snap fit manner (Fig. 2).

#### ***Response to Arguments***

Applicant's arguments filed 6/15/09 have been fully considered but they are not persuasive. The applicant argues Coffey is non-analogous art with Taylor, therefore a 103 rejection is improper. The examiner respectfully disagrees that the 103 rejection is improper. That is, it has been held that the determination that a reference is from a non-analogous art is twofold. First we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In this case, Coffey teaches a rotatable connector in the field of approximation devices with elongate arms.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 3773

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